

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BASHEEN RUSH,

Petitioner,

Civil Action No.
CV-99-2840 (DGT)

- against -

ORDER

CHRISTOPHER ARTUZ, Superintendent,

Defendant.

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TRAGER, J.

On May 14, 1999, petitioner Basheen Rush, proceeding pro se, filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the following grounds: (1) sufficiency of the evidence, (2) the prejudice caused by the trial court's denial of a continuance for additional DNA testing, (3) prosecutorial misconduct, (4) improperly introduced evidence, (5) failure to provide documents, (6) the court reporter's inaccurate reading back of trial testimony and (7) ineffective assistance of appellate counsel. Petitioner's claim was referred to United States Magistrate Judge Cheryl Pollak for a Report and Recommendation ("Report").

On August 7, 2008, Judge Pollak issued her Report recommending that the petition be denied. On October 18, 2007, petitioner filed objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure.

Petitioner's objections, for the most part, merely reiterate arguments he made in his petition. To the extent his objections

raise new claims, e.g., that the State provided him with the DNA expert's final report on the eve of trial, those objections were not raised before this Court until now and are untimely.

Furthermore, the objections are not supported by the record.

After an independent review of the record and the Report, it is hereby ordered that the Report is adopted and petitioner's application for writ of habeas corpus is denied. Further, a certificate of appealability shall not issue because petitioner has not demonstrated a substantial showing of a constitutional violation. See 28 U.S.C. § 2253(c)(2).

The Clerk of the Court is directed to enter judgment accordingly and close the case.

Dated: Brooklyn, New York
April 10, 2009

SO ORDERED:

_____/s/
David G. Trager
United States District Judge